

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:	Chapter 7
Lynn M. Tracey,	Case No.: 03-51032 GFK
Debtor.	

Terri A. Georgen, Trustee,	
Plaintiff,	
v.	Adversary No.
Lynn M. Tracey, Donovan Schwarzkopf and Dawn Schwarzkopf,	
Defendants.	

COMPLAINT

TO: Donovan Schwarzkopf and Dawn Schwarzkopf
26 Arbutus Drive
Duluth, MN 55810

Plaintiff, Terri A. Georgen, Trustee, for her cause of action and prayer for relief, states as follows:

I. JURISDICTION AND PARTIES

1. On August 7, 2003, a petition for relief was filed under Chapter 7 of the Bankruptcy Code by Lynn M. Tracey (“Debtor”), thereby commencing the above-referenced bankruptcy case.

2. Terri A. Georgen (“Trustee”) was appointed trustee of this Chapter 7 bankruptcy estate and is the Trustee currently.

3. Defendants, Donovan Schwarzkopf and Dawn Schwarzkopf (“Schwarzkopfs”), are individuals residing at 26 Arbutus Drive, Duluth, Minnesota, 55810.

4. Defendant, Lynn M. Tracey (“Debtor”), is an individual residing at 2206 West 4th Street, Duluth, Minnesota 55806.

5. The Court has jurisdiction over this adversary proceeding pursuant to Sections 157 and 1334 of Title 28 of the United States Code and Bankruptcy Rule 7001.

6. Venue of this adversary proceeding is appropriate in this Court pursuant to Section 1409 of Title 28.

7. This adversary proceeding arises under Sections 548, 550 and 551 of the U.S. Bankruptcy Code. This is a core proceeding pursuant to Section 157(b)(2)(B), (F), (K) and (O) of Title 28. This complaint is filed under Bankruptcy Rule 7001 and Local Rule 901.

**COUNT I.
FRAUDULENT TRANSFER OF REAL ESTATE UNDER SECTION 548 OF THE
U.S. BANKRUPTCY CODE – CONSTRUCTIVE FRAUD**

8. As of March 20, 2003, Lynn M. Tracey owned real estate in St. Louis County, Minnesota, legally described as (the “Property”):

The Northerly One Hundred Sixty-five feet (N’ly 165’) of the East Half of the Northeast Quarter of Northeast Quarter of Southeast Quarter (E½ of NE¼ of NE¼ of SE¼), Section Twenty-one (21), Township Fifty (50) North of Range Fifteen (15) West of the Fourth Principal Meridian, according to the United States Government Survey thereof, St. Louis County, Minnesota.

Title of the Property is currently memorialized by Certificate of Title No. 294591 with the St. Louis County Registrar of Titles.

9. On March 20, 2003, and within one-year prior to the filing of the bankruptcy petition herein, Debtor executed a deed to defendant Donovan Schwarzkopf, who is Debtor’s son, purporting to transfer the Property for a consideration of \$500.00 or less. Such deed was

recorded with the St. Louis County Registrar of Titles on April 7, 2003 as Document No. 745582.

10. Defendant Dawn Schwarzkopf is married to defendant Donovan Schwarzkopf and may claim an interest in the Property as a result thereof.

11. The Property transferred to defendant Donovan Schwarzkopf had a value, on the date of transfer, in excess of \$35,000.00.

12. The transfer of the Property to defendant Donovan Schwarzkopf constitutes a transfer of an interest of the Debtor in property.

13. The Debtor received less than reasonably equivalent value in exchange for such transfer, and was insolvent on the date the transfer was made or intended or believed that the Debtor would incur debts that would be beyond the Debtor's ability to pay as such debts matured.

14. Pursuant to 11 U.S.C. § 548, the Trustee may avoid the transfer of the Property to Donovan Schwarzkopf, including any interest obtained thereby by Dawn Schwarzkopf.

15. Pursuant to 11 U.S.C. § 550(a) and § 551, the Trustee may preserve such transferred interests for the benefit of the bankruptcy estate and against any claim by the Debtor to exempt the property.

COUNT II.
FRAUDULENT TRANSFER OF PROPERTY UNDER SECTION 513.44 OF
THE MINNESOTA STATUTES – ACTUAL FRAUD

16. Plaintiff reincorporates and realleges the allegations in paragraphs 8 through 13.

17. The transfer of the Property was made by the Debtor with actual intent to hinder, delay or defraud her then existing and future creditors.

18. Pursuant to 11 U.S.C. § 548, the Trustee may avoid the transfer of the Property to Donovan Schwarzkopf, including any interest obtained thereby by Dawn Schwarzkopf.

19. Pursuant to 11 U.S.C. § 550(a) and § 551, the Trustee may preserve such transferred interests for the benefit of the bankruptcy estate and against any claim by the Debtor to exempt the property.

WHEREFORE, Plaintiff requests judgment in favor of the Trustee and against the Defendants as follows:

1. Granting judgment to Trustee avoiding the transfer of the Property by Debtor to Schwarzkopfs pursuant to Section 548 of the Bankruptcy Code; and
2. Preserving such avoided transfer as against any claim the Debtor might make to exemption of the Property, such preservation pursuant to the provisions of 11 U.S.C. § 550 and § 551; and
3. Awarding judgment in favor of the Trustee and against the Defendants for taxable costs and disbursements; and
4. Granting any other relief the Court deems just and proper.

Date: May 12, 2004

BEST & FLANAGAN LLP

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Plaintiff